Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
GTE Corporation, Transferor,	)	CC Docket No. 98-184
And Bell Atlantic Corporation, Transferee	)	
For Consent to Transfer of Control	)	
	)	

REPLY COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services ("ALTS") submits these reply comments opposing Verizon's request that the FCC count Verizon's failed investment in NorthPoint Communications (NorthPoint) toward satisfaction of its out-of-region merger obligation.[1] ALTS is the leading national industry association whose mission is to promote facilities-based local telecommunications competition.

[1] *Common Carrier Bureau Seeks Comment on Verizon's Request to Count Investment in NorthPoint Toward Out-of-Region Merger Obligation*, DA 02-567, CC Docket No. 98-184 (rel. March 12, 2002). On March 7, 2002, Verizon Communications, Inc. (Verizon) submitted a letter to the Common Carrier Bureau regarding Verizon's progress in satisfying Condition XVI (Out-of-Territory Competitive Entry) of the Bell Atlantic/GTE Merger Conditions. Letter from Gordon Evans, Vice President, Federal Regulatory, Verizon, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 98-184 (filed Mar. 7, 2002) (*Verizon March 7th Ex Parte*). Condition XVI requires Verizon to spend a total of at least $500 million within 36 months of merger close "to provide services, including resale, that compete with traditional local telecommunications services offered by incumbent local exchange carriers or to provide Advanced Services to the mass market . . . outside the Bell Atlantic/GTE Service Areas []." *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, Memorandum Opinion and Order*, 15 FCC Rcd 14032, at 319 and Appendix D, paras. 43-48 para. 319 (2000) (*Bell Atlantic/GTE Merger Order*). As described in its March 7, 2002 letter, Verizon seeks to count its failed investment in Northpoint Communications Group, Inc. (NorthPoint) toward satisfaction of Condition XVI, although that merger was never completed.

ALTS agrees with all of the initial commenters, who universally opposed Verizon's patently absurd attempt to thwart both the letter and the spirit of Verizon's out-of-region merger obligations. For years, competitors have argued that Verizon and the other Bell Companies have attempted to maintain monopoly control over captive consumers with no intention of participating in a fair competitive marketplace. Typically, competitors have had to rely on arguments that Bell tactics were designed to cause "death by a thousand cuts" (*e.g.,* miss a provisioning date here; overcharge for an element there; misplace an order; reject an order because of a minor technicality; establish cumbersome, Rube Goldberg provisioning processes that beg for errors – anything to avoid having to compete on a level playing field). This insidious, but covert, policy of strategic incompetence has allowed the Bell Companies to maintain essentially monopoly control over their own consumers, while tacitly agreeing not to invade other Bell turf. The only Bell-initiated forays out-of-region occur via mutually agreed to horizontal mergers, which do nothing to promote competition but serve rather to turn a large, entrenched monopolist into an even larger, entrenched monopolist.

The one consumer benefit of the Bell mergers was the ability of the regulators to impose market-opening pressure upon the Bell Companies by compelling them to compete against one another. Verizon's audacious attempt to avoid its obligation to compete out-of-region mocks the FCC's worthy effort to compel historic monopolists to become reluctant competitors.

The only good news about Verizon's blatant attempt to avoid its out-of-region merger commitment is that Verizon has finally revealed its utter dread of competition and its previously unspoken intention never to compete unless legally compelled. Verizon's request to count its deposit in NorthPoint as partial satisfaction of its out-of-region commitment cannot possibly pass the straight face test. Verizon knows how it treats its own wholesale customers and competitors, and would never want anyone else to be able to treat it so abysmally. Combined with SBC's apparent refusal to abide by its merger commitment to compete out-of-region, it seems that the Bell Companies have at least a tacit understanding that they will not compete against one another and will make life a living hell for anyone that dares to compete on their home turf.[2]

It should be noted that ALTS did not oppose the Verizon-NorthPoint merger. In fact, ALTS believed Verizon's alleged desire to establish a truly separate advanced services affiliate, via the NorthPoint acquisition, would help other CLECs seeking nondiscriminatory access to customers within Verizon territory. No one could have anticipated that Verizon would fabricate such a patently absurd misreading of its out-of-region merger commitment.

It should also be noted that ALTS, while opposing Verizon's sham spin-off of Genuity, did not oppose the broader issues in the Bell Atlantic-GTE merger. In fact, ALTS viewed the Bell Atlantic-GTE merger as a reasonable vehicle to compel Verizon to act as a competent, if reluctant, wholesale provider to its CLEC competitors/customers. The out-of-region obligation would presumably advance this goal by allowing Verizon to experience the trials and tribulations of the average CLEC (albeit one with much deeper pockets), which might sensitize Verizon into

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[2] Verizon's refusal to compete out-of-region substantiates CLEC problems entering markets ruled by an entrenched monopolist. The Bell Companies have argued that they provide quality provisioning to their wholesale customers and that prices charged for interconnection and access to network elements are excessively low. If this were the case, it should be in the Bell Companies' best interest to voluntarily compete out of region. There is a logical disconnect between the Bell Companies' refusal to compete out-of-region and their assertions that CLECs are obtaining access at below cost rates. *See* Focal Comments at 4.

better wholesale provisioning. Even if Verizon were not adequately sensitized by its out-of-region experience, ALTS believed that Verizon might become a good, if reluctant, in-region wholesaler if only to avoid retribution by other Bell Companies similarly compelled to compete in Verizon territory.

Rather than viewing Verizon's $150 million deposit in NorthPoint as an effort to compete out-of-region, the NorthPoint deposit is better viewed as an attempt to eliminate an in-region competitor.[3] Verizon's suggestion that its NorthPoint deposit should be applied to its satisfaction of its out-of-region merger commitment is especially absurd given the fact that NorthPoint has sued Verizon, claiming that "Verizon wrongfully terminat[ed] the merger agreement and funding agreement under false pretenses, and then reneg[ed] on its promises to invest $800 million in cash and over $500 in assets."[4] NorthPoint, in fact, has alleged that the entire merger was a scheme to force NorthPoint into bankruptcy and to steal NorthPoint's "proprietary, trade secret information."[5] A Verizon memorandum apparently proposed that "rather than merging with NorthPoint, Verizon should let NorthPoint go bankrupt and then buy NorthPoint cheap out of bankruptcy."[6]

Verizon's out-of-region commitment requires Verizon to spend $500 million to provide services. Rather than pursue any out-of-region competition via a NorthPoint acquisition, Verizon chose unilaterally to terminate its agreement. Verizon now asks the FCC to credit it for a failed investment it was forced to write off, for which it retained no value, and which is obviously not being used to provide any services by Verizon, either in-region or out-of-region. The requirement to provide services that compete with traditional local telecommunications

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[3] See AT&T Comments at 2-4.
[4] First Amended Complaint, *NorthPoint v. Verizon*, California Superior Court (San Francisco), Case No. 317249, filed July 12, 2001.
[5] *Id.* at para. 27.

services cannot be satisfied by a failed venture that does not result in the provision of any services or deployment of any infrastructure. Verizon's only hook is that it "did 'spend" money to 'obtain' facilities, operating support systems, or equipment that are used to serve customers in Out-of-Region Markets."[7] Verizon argues: "that the final merger was never completed does not alter the fact of Verizon's payment."[8] The issue is not whether a payment was made, but whether the payment was used to purchase or lease facilities that are, in fact, used to "provide competitive local service and associated services outside of the Bell Atlantic and GTE legacy service areas."[9] Verizon's deposit in NorthPoint cannot count toward this obligation for the simple reason that this expenditure was not invested in facilities that are used to provide competitive services.

This attempt by Verizon's to apply its $150 million deposit in alleged anticipation of acquiring NorthPoint as satisfaction of Verizon's out-of-region commitment clearly violates not only the intent of the Bell Atlantic-GTE merger obligations, but also the letter of the commitment. As any homebuyer knows, an acquirer does not "obtain" property by merely paying a deposit. Nothing is obtained until full payment or full commitment to pay. Condition XVI contemplated that the facilities "obtained" be used out-of-region while Verizon is still the acquirer. There is no way this condition can be satisfied by an agreement never completed.[10] Upon withdrawing from the merger, Verizon made very clear that it did not intend to use any NorthPoint facilities even in anticipation of competing out-of-region. In fact, Verizon's withdrawal from the NorthPoint merger led to NorthPoint's demise both in-region and out-of-region, thereby further contributing to a lack of competition out of region. In the event that

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[6] *Id.* at para. 10.
[7] *Verizon March 7th Ex Parte* at 2.
[8] *Id.*
[9] *Bell Atlantic/GTE Merger Order* para. 319.

NorthPoint prevails in its legal challenge against Verizon, Verizon would essentially be responsible for the lack of a multi-billion dollar competitor. The real question before the FCC should be whether Verizon should have to make an additional multi-*billion* dollar investment out-of-region to make up for the fact that it eliminated an out-of-region competitor. Verizon's commitment was to foster out-of-region competition not to eliminate it. Verizon's paltry $500 million commitment cannot make up for the loss to competition by the dissolution of NorthPoint. Furthermore, if NorthPoint does prevail against Verizon, would Verizon be entitled, as a NorthPoint creditor, to recompense for its $150 million deposit? If so, would that mean that, if Verizon's request herein were granted, Verizon will have retroactively failed to satisfy its 36-month deadline because it would, at such time, be $150 million shy? If Verizon were allowed to get away with this, than all it would have had to do to satisfy its out-of-region commitment was make a $500 million loan, payable back to Verizon the day after the 36-month out-of-region deadline expired.

The fact is that Verizon declined to complete its acquisition of NorthPoint, and NorthPoint shut down without Verizon ever owning it, so there never was any Verizon "out-of-region" business generated or even offered. Verizon's withdrawal of it commitment to purchase NorthPoint contributed to, if not directly caused, NorthPoint's bankruptcy and dissolution. None of the NorthPoint assets have ever been used by Verizon to offer out-of-region service. Verizon's attempt to keep $150 million in its in-region ILEC business as opposed to investing it in an out-of-region CLEC business is an embarrassing example of the Bell Companies' success in illegally handicapping CLECs.

Certainly Verizon's deposit with NorthPoint is inconsistent with the public interest objectives of the *Bell Atlantic/GTE Merger Order*. The FCC recognized that, absent conditions,

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[10] *See, e.g.,* WorldCom Comments at 2-3.

the Bell Atlantic-GTE merger could not satisfy the public interest.[11] According to the *Bell Atlantic/GTE Merger Order*, "the Applicants' package of conditions, with the modifications by this Commission, alters the public interest balance of the proposed merger by mitigating substantially the potential public interest harms while providing additional public interest benefit."[12] One of the "primary public interest goals" of the merger conditions was fostering out-of-region competition.[13] The FCC noted that the Out-of-Region Expenditure commitment would serve "to ensure that residential consumers and business customers outside of Bell Atlantic/GTE's territory will benefit from meaningful, facilities-based competitive service."[14] Money spent on a venture that does not result in any service cannot be said to foster "meaningful, facilities-based competitive service." Verizon represented to the FCC that the public interest benefits of the merger could not be realized until the merger was closed.[15] Verizon unilaterally terminated the merger and now claims that the public interest benefits were actually realized even though the required merger never occurred.[16]

Finally, it must not be overlooked that Verizon and NorthPoint shared a largely overlapping footprint. In the event that the FCC were to find even a shred of merit to Verizon's claim, only a small portion of the $150 million could ever be linked to out-of-region service. Verizon's primary objective for NorthPoint was not to compete out-of-region, but rather to fill

[11] *Bell Atlantic/GTE Merger Order* at para. 247.
[12] *Id.* at para 247.
[13] *Id.* at para 251.
[14] *Id.* at para 321.
[15] *Joint Petition of NorthPoint Group, Inc., and Bell Atlantic Corp. for Approval of Agreement and Plan of Merger,* New York PSC at 11 ("The sooner the transaction can close, the sooner the public interest benefits noted above can be realized.")
[16] *See* Covad Comments at 3-4.

out its array of in-region offerings, with NorthPoint SDSL-based service complementing Verizon's own residential ADSL offering and its business offerings such as T-1 service.[17]

For the foregoing reasons, as well as those put forth in every single initial comment in this proceeding, the FCC must deny Verizon's request to count its $150 million deposit in NorthPoint toward Verizon's out-of-region commitment set forth in the *Bell Atlantic/GTE Merger Order*.

Respectfully submitted,

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[17] *Joint Application of NorthPoint and Verizon for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Control of Blanket Authorization To Provide Domestic Interstate Telecommunications Services as a Non-Dominant Carrier*, CC Docket No. 00-157, Reply Comments of NorthPoint and Verizon at 16-19.

CERTIFICATE OF SERVICE

I, Jonathan Askin, do hereby certify that on this 22 day of March, 2002, caused to be delivered by United States Postal Service first class mail and facsimile a true and correct copy of the reply comments of the Association for Local Telecommunications Services opposing Verizon's request in CC Docket No.98-184 on the following:

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